

The claimant appeared by and through his attorney, Derek J. Shafer, of Topeka, Kansas. The respondent and its insurance carrier appeared by and through their attorney, John R. Cunningham, of Overland Park, Kansas. There were no other appearances.

RECORD

The record reviewed and considered by the Appeals Board consists of all pleadings filed of record with the Division of Workers Compensation and the transcript of the November 1, 1993 preliminary hearing, including all exhibits attached thereto.

ISSUES

- (1) Did the injury for which medical treatment has been ordered arise out of and in the course of claimant's employment?
- (2) Did the Administrative Law Judge exceed his jurisdiction in ordering physical therapy with a specific provider?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

- (1) Based upon the review of the record presented, the Appeals Board finds that, more probably than not the cervical injury for which the medical treatment has been ordered did arise out of and in the course of claimant's employment.

Claimant, who performed carpentry and maintenance work for respondent, first began experiencing hand and arm symptoms in April of 1991. He saw the company nurse two or three times with complaints relating to his hands and wrists, not his neck. He was referred to Dr. Sankoonikal and when he first saw the doctor on June 27, 1991, his chief complaints related to his wrists and forearms but he did make reference to occasional pain in his neck. Claimant has had bilateral carpal tunnel surgery and respondent does not, in this proceeding, challenge the injury to the hands and wrists. Respondent does object to providing additional treatment for neck complaints.

The record does, however, generally indicate that more probably than not the neck symptoms and complaints also stem from claimant's work activities. Dr. Wertzberger's report indicates that claimant had an onset of pain in the right wrist and forearms but the symptoms became progressively more proximal to the elbow and shoulder region. On a reexamination in May of 1992 Dr. Wertzberger notes:

"Taking into consideration the development of bilateral upper extremity syndrome essentially unexplained other than through exertional levels of work one must consider investigation of the cervical region."

After that examination in May of 1992, additional testing, including an MRI, revealed a bulging disk at C6-7. The carpal tunnel surgery performed by Dr. Moore appears not to have not significantly relieved claimant's symptoms. Dr. Wertzberger's report of July 15, 1992, indicates:

"Mr. Lynn's bilateral upper extremity problems may be cervical in origin, and this may explain his atypical response to medial nerve decompression and his persistent upper extremity symptomatology."

It appears that the onset of the upper extremity symptoms resulted from claimant's employment. Dr. Wertzberger indicates that the upper extremity complaints were probably cervical in origin. For these reasons the Appeals Board finds that the evidence, taken as a whole, indicates that more probably than not the claimant's cervical condition arose out

of and in the course of his employment.

(2) The Appeals Board finds that the Administrative Law Judge had jurisdiction to award medical care with a specific provider and accordingly the order in this case for care with a specific provider is not reviewable by the Appeals Board.

K.S.A. 44-551 provides that appeals may be taken from preliminary orders where it is alleged that the order exceeds the jurisdiction of the Administrative Law Judge. The Appeals Board concludes that the order in this case does not exceed the jurisdiction of the Administrative Law Judge. K.S.A. 44-534a provides that from a preliminary hearing the Administrative Law Judge may award medical treatment at respondent's expense. This is not a case involving change of physicians. The Appeals Board considers the authority to order medical treatment to include authority to require that treatment be provided with a specific provider. The Appeals Board recognizes that the respondent does, in the first instance, have authority to designate the authorized treating physician. When, however, the respondent does not do so and medical care is ordered as a result of a preliminary hearing, the Administrative Law Judge may either direct that the respondent choose a physician or, in the alternative, may designate the physician requested by the claimant or from whom claimant has already obtained treatment.

In this case the Administrative Law Judge has designated a specific physical therapy group. The Appeals Board expects that the physical therapy group would not be willing to provide care unless under the supervision and the direction of a physician. In this case physical therapy at Plaza Physical Therapy group was previously authorized under the direction of Dr. Wertzberger. Claimant has testified that physical therapy helped his condition. He has also testified that his condition has become worse since then. To date no physician has prescribed additional physical therapy. It is possible that the physician will not feel physical therapy is, at this late date, likely to be helpful.

Under the circumstances the Appeals Board does, therefore, give the Order of the Administrative Law Judge what is understood to be its original intent. The Appeals Board understands the Order as one that respondent provide physical therapy from the Plaza Physical Therapy group at the direction of Dr. Wertzberger subject to Dr. Wertzberger's indication that he feels same is appropriate and likely to provide benefit for claimant's cervical condition. With this understanding the Administrative Law Judge did not exceed his jurisdiction.

AWARD

WHEREFORE, with the above described clarification the decision of the Administrative Law Judge dated November 1, 1993, is affirmed and remains in effect.

IT IS SO ORDERED.

Dated this _____ day of February, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: Derek J. Shafer, 534 S Kansas, Suite 1400, Topeka, Kansas 66603-3408
John R. Cunningham, 7101 College Blvd., Overland Park, Kansas 66210
Floyd V. Palmer, Administrative Law Judge
George Gomez, Director